Supreme Court, U.S.
FILED
MAY 9 1994
OFFICE OF THE CLERK

No. 93-1365

In The

Supreme Court of the United States

October Term, 1993

THE SAMMETT CORPORATION,

Petitioner,

v.

KEY ENTERPRISES OF DELAWARE, INC.,

Respondent.

On Petition for A Writ of Certiorari To The United States Court of Appeals For The Eleventh Circuit

BRIEF IN RESPONSE

G. HUNTER GIBBONS
Counsel of Record
DICKINSON & GIBBONS, P.A.
1750 Ringling Blvd.
Sarasota, Florida 34236
(813) 366-4680
Counsel for Respondent, Venice Hospital

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

STATEMENT OF THE CASE

Respondent, Venice Hospital, agrees with the Statement of the Case contained in the Sammett Corporation's Petition for Writ of Certiorari (Pet. 2-7), with the following additions or corrections:

Venice Hospital assumed it had settled its portion of the case and did not orally argue or file an en banc brief before the Eleventh Circuit. However, Venice Hospital did move for leave to file an amicus brief, and was granted leave to proceed as an amicus curiae, generally supporting the position of The Sammett Corporation. See, Pet. App. 14a, n. 13.

Though the Settlement Agreement did not require Respondent VCA to execute a release to Venice Hospital, it did specifically require VCA to give Venice Hospital a satisfaction of judgment after the case was returned to the district court (which judgment was that to be entered on the contemplated reinstated jury verdict). See, Pet. App. 5a. Venice Hospital contemplated that the judgment and satisfaction thereof would have a res judicata or collateral estoppel effect on future litigation against Venice Hospital by VCA, regardless of self-serving statements made by VCA in the joint motions presented to the Eleventh Circuit.

ARGUMENT

THE ELEVENTH CIRCUIT ACTED ERRONEOUSLY AND INCONSISTENTLY WITH THIS COURT'S PRECEDENTS WHEN IT VACATED THE JUDGMENT OF THE DISTRICT COURT.

Respondent, Venice Hospital, agrees with Petitioner, The Sammett Corporation that vacatur of the district

court's original judgment as applied in the Eleventh Circuit opinion is erroneous and does not serve the interest of the parties or judicial economy. See, Pet. 7-14.

Venice Hospital emphasizes that it has agreed to settle this case with Respondent VCA, but the settlement is now executory because of ambiguity in the Eleventh Circuit opinion which ambiguity would be resolved by the Court ruling on this Petition for Writ of Certiorari. Although Venice Hospital considers itself no longer a party to this action, it finds itself compelled to support the Petition for Writ of Certiorari as the Court has required it to respond.

The Eleventh Circuit's opinion makes the effect of the settlement ambiguous. The Eleventh Circuit's opinion is confusing in that it does not advise the trial court or the parties what sort of judgment is to be entered on remand. Due to this omission, the preclusive effect of the prior litigation on the second suit requesting additional damages from the original defendants for the time period forward from the settlement, based on exactly the same causes of action, as discussed in the Petition at 10, is completely unclear. If the judgment entered reinstates the district court's JNOV opinion, as Petitioner Sammett seeks, it would have the effect of res judicata or collateral estoppel on the second suit. The judgment would also have such an effect if it reinstates the jury verdict, as originally provided in the settlement agreement. Pet. App. 5a. The judgment will also have such an effect if it dismisses the case with prejudice. *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955).

However, since the Eleventh Circuit's opinion does not specify what sort of judgment will be entered on remand, it is vague as to the res judicata effect Venice Hospital intended in agreeing to the settlement providing for entry of a judgment and satisfaction thereof. The Eleventh Circuit effectively has rewritten the settlement agreement as intended by the parties and could arguably expose Venice Hospital and The Sammett Corporation to re-litigation of the same issues in a second lawsuit.

CONCLUSION

For the foregoing reasons, and those suggested in the Petition for Writ of Certiorari, Respondent, Venice Hospital, respectfully submits that the Court should grant the Petition to modify the judgment of the Eleventh Circuit and order it either to reinstate the judgment of the district court or specify entry of another form of judgment on the merits, which will have a preclusive res judicata effect on similar litigation between the parties.

Respectfully submitted,

G. HUNTER GIBBONS
(Counsel of Record)
RICHARD R. GARLAND
DICKINSON & GIBBONS, P.A.
1750 Ringling Blvd.
Sarasota, Florida 34236
(813) 366-4680
Counsel for Respondent,
Venice Hospital